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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,998	05/19/2006	Bernhard Lucas	10191/4566	7625
26646 7590 08/22/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER BLOUNT, ERIC				
ART UNIT 2612		PAPER NUMBER		
MAIL DATE 08/22/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,998

Applicant(s)

LUCAS ET AL.

Examiner

ERIC M. BLOUNT

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. Claims 13-30 are currently pending in the instant application. Claims 13-24 are presented as filed on May 19, 2006. Claims 25-30 are new.

Response to Arguments

2. Applicant's arguments, see arguments/remarks, filed June 2, 2008, with respect to the rejections of claims 13-24 under 35 USC 102 (e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ernst Jr.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 13-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernst, Jr. et al [US 7,124,027 B1].

With regard to **claim 13**, Ernst discloses a method for warning a driver of a motor vehicle, comprising:

- detecting, by an object detector (104), at least one preceding vehicle (106), and a distance and relative velocity with respect to the motor vehicle (column 5, lines 3-20);
- supplying the distance and relative velocity to an evaluation device (column 5, line 65 – column 6, line 21);
- ascertaining, by the evaluation device, whether, assuming that the preceding vehicle performed a deceleration, a collision with the preceding vehicle would be avoidable as a function of a reaction time of the driver and a deceleration of the motor vehicle (column 27, line 15 - column 28, line 63; The assumption that a vehicle decelerates to stopped or a predetermined percentage reads on the claimed assuming the preceding vehicle performed a deceleration.); and
- activating a warning device in an event that the collision would be unavoidable (column 24, lines 10-63 and column 30, lines 24-66; Ernst shows that a warning is issued when a host vehicle approaches a leading vehicle inside a range wherein the vehicles would be capable of completely stopping without colliding.).

Ernst does not specifically disclose that maximum possible deceleration is used to determine if an accident is avoidable. Instead Ernst discloses that the braking profile is user specific and that a braking level that is comfortable for a specific driver would be used to determine whether the warning device should be activated. Obviously, if the maximum possible

deceleration were comfortable for a driver then that value would be used along with the other aforementioned factors to determine if an accident is avoidable. However, in driver warning systems it is advantageous for a driver to be warned about a hazardous situation at a time where the driver may avoid danger without drastically changing his/her driving pattern (i.e. slamming on brakes). Using these teachings, it can be seen that a trade-off exists between the warning times and driver braking force. Examiner contends that the amount of braking force used in determining whether an accident is avoidable is obviously interchangeable and would be left to the skilled artisan.

As for **claims 14-16**, Ernst discloses a plurality of ways to determine driver reaction time (column 31, line 49 – column 32, line 2).

As for **claim 17**, Ernst discloses the warning device can issue an acoustic or visual signal (column 4, lines 54-62).

Regarding **claim 18**, the warning device issues a driver warning using a reversible belt tensioner, the reversible belt tensioner being pretensioned once or several times (column 7, lines 54-65).

As for **claim 19**, the warning device issues a driver warning device by a brief triggering of a deceleration device (column 8, lines 1-10).

As for **claim 20**, the warning device issues a driver warning at least one of: i) by a haptic accelerator pedal, and ii) in the form of a vibration of a steering wheel (column 7, lines 54-65).

As for **claim 21**, the claim is interpreted and rejected using the same reasoning as claim 13 above.

As for **claim 22**, the claim is interpreted and rejected using the same reasoning as claim 17 above.

As for **claim 23**, the claim is interpreted and rejected using the same reasoning as claim 18 above.

As for **claim 24**, the claim is interpreted and rejected using the same reasoning as claim 19 above.

As for **claim 25**, the claim is interpreted and rejected using the same reasoning as claim 14 above.

As for **claim 26**, the claim is interpreted and rejected using the same reasoning as claim 15 above.

As for **claim 27**, the claim is interpreted and rejected using the same reasoning as claim 16 above.

As for **claim 28**, the claim is interpreted and rejected using the same reasoning as claim 18 above.

As for **claim 29**, the claim is interpreted and rejected using the same reasoning as claim 19 above.

As for **claim 30**, the claim is interpreted and rejected using the same reasoning as claim 20 above.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC M. BLOUNT whose telephone number is (571)272-2973. The examiner can normally be reached on Monday-Thursday 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Bugg can be reached on (571) 272-2998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric M. Blount
Examiner
Art Unit 2612

/Eric M. Blount/
Examiner, Art Unit 2612